

October 10, 2003

EASTERN MAINE ELECTRIC CO-OP, INC.
Proposed Tariff Revision to Establish
Conservation Assessment Surcharge

ORDER ON
RECONSIDERATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

By this Order, we reconsider our *Order on Conservation Program Funding* of April 4, 2003 (*the April 4 Order*), in Docket No. 2002-162, and grant a stay of the *April 4 Order* as it relates to the conservation assessment for Eastern Maine Electric Co-op, Inc. (EMEC). Until our investigation in Docket No. 2003-348 is completed, we will exclude the kWhs sold to Domtar from the calculation of conservation assessment of 0.6 mils/kWh. Instead, EMEC's assessment will be 0.6 mils/kWh for the kWhs sold to its customers other than Domtar, and 0.5% of the revenue received from Domtar, effective July 1, 2003.

II. BACKGROUND

In our *April 4 Order*, we decided to assess all transmission and distribution (T&D) utilities at the statutory maximum, 1.5 mils/kWh, for conservation programs. See 35-A M.R.S.A. § 3211-A(4)(B). For those T&D utilities that had been assessed at the statutory minimum, or 0.5% of total T&D revenue, we decided to phase-in the increased assessment. The statutory minimum rate produced a per kWh rate that varied from about 0.02 to .73 mils/kWh. Accordingly, we decided to begin the phase-in, effective July 1, 2003, at 0.6 mils/kWh or the then-current assessment, whichever was larger.

In reaching our funding decision, we noted that some consumer-owned T&D utilities (COUs) asserted that the nature of their service territories warranted lesser conservation assessments. See 35-A M.R.S.A. § 3211-A(4)(A). Because Docket No. 2002-162 had not included a detailed, individualized examination of the COUs' service territories, we decided to open an investigation and invite all COUs to demonstrate the facts that justify treating their service territories differently.¹ We stated that the initial

¹ The investigation has been opened and assigned Docket No. 2003-348.

assessment of 0.6 mils/kWh (or the current level for the COUs above 0.6 mils) would represent only a small increase to the statutory minimum (or the statutory minimum for those COUs already above 0.6 mils). Since the next step increase in the assessment of 0.2 mils/kWh would not be imposed for one year, there was adequate time for the Commission to conclude its investigation while the conservation assessments represented only a small increase over the statutory minimum.

On April 11, 2003, Madison Paper Industries (MPI) filed a petition to suspend the April 4 Order from requiring a conservation assessment of 0.6 mils/kWh on Madison Electric Works (MEW) effective July 1, 2003.² MPI asked to suspend the increase until the Commission completes its investigation concerning the COUs (Docket No. 2003-348), and to leave MEW's assessment at the statutory minimum in the meantime. MPI argued that the Commission erred in the April 4 Order when it concluded that an assessment of 0.6 mils/kWh "represent[s] . . . a small increase to the statutory minimum" for MEW. *April 4 Order* at 6. The then-current, and statutory minimum assessment (or 0.5% of revenue), for MEW was only \$6,239, according to MPI. MPI asserted that an increase to 0.6 mils/kWh would produce an assessment of over \$135,800.

By Order on Reconsideration on June 30, 2003, we granted MPI part of the relief it sought. MPI's kWh usage is such a large portion of MEW's total kWh delivered, such that MPI would be responsible for about \$120,000 of the approximately \$136,000 assessment. As a per kWh surcharge on MPI, MPI's total T&D bill would rise by more than 66%. We reasoned that:

For rate stability reasons alone, we would typically phase-in or otherwise reduce such a large percentage increase. Given that we have opened Docket No. 2003-348 in order to give MEW and MPI, among others, an opportunity to demonstrate "special circumstances" that justify different conservation assessments, we believe that the simplest and most equitable course of action is to exempt MPI from the effect of the conservation assessment surcharge pending the investigation and to adjust MEW's conservation assessment accordingly.

June 30 Order, at 2.

We did not grant MPI's request that the 0.6 mils/kWh be delayed for the other customers of MEW. A 0.6 mils/kWh surcharge represented less than a 2% increase to those customers. Moreover, the residential and small commercial customers in MEW's service territory are eligible for many of the Commission's interim conservation programs.

² We treated MPI's petition as a petition to reconsider, governed by Chapter 110, section 1004.

On July 11, 2003, EMEC filed revised rate schedules, for effect on August 11, 2003. EMEC's new rate schedules impose a conservation assessment surcharge of 0.6 mils/kWh on each kWh delivered, except for the kWhs delivered to EMEC's largest customer, Domtar. EMEC excluded Domtar because in its view, Domtar and MPI are similarly situated and Domtar should likewise not be subject to the assessment surcharge. Since EMEC's request to reconsider the April 4 Order as applied to Domtar was more than 20 days after the April 4 Order, EMEC asked for, and the Hearing Examiner granted, a waiver of the Chapter 110 20-day deadline for petitions to reconsider. The rate schedules filed on July 11 were allowed to go into effect on August 11, 2003.

In accordance with the Hearing Examiner's Procedural Order, EMEC filed its petition to reconsider the April 4 Order on September 11, 2003. EMEC asked to exclude kWhs delivered to Domtar in calculating EMEC's conservation assessment, but to continue instead to assess at the statutory minimum of 0.5% of revenue received from Domtar. EMEC stated that it was specifically concerned about the impact of a surcharge on Domtar, its largest and only industrial customer. EMEC asserted that a surcharge on Domtar of the fully phased-in 1.5mils/kWh would amount to an increase in Domtar's T&D bill of \$46,500 per year. In EMEC's view, Domtar needs to avoid a \$46,500 increase in T&D rates to help ensure that Domtar can continue to employ a large number of persons in EMEC's service territory. At 0.6 mils/kWh, the increase to Domtar would be about \$19,000. EMEC asked that the Commission revise its April 4 Order as it applies to Domtar as a "permanent" matter. Alternatively, EMEC asked that the Commission temporarily exclude Domtar's sales for EMEC's conservation assessment pending completion of the Commission's investigation of the COUs' assessment in Docket No. 2003-348.

III. DECISION

Although the percentage increase to Domtar caused by a surcharge of 0.6 mils/kWh is not as striking as the percentage increase to MPI's total T&D bill, we find that Domtar's circumstances are sufficiently similar to MPI's that simplicity and equity justify exempting Domtar from the effect of the assessment surcharge, pending the Docket No. 2003-348 investigation and to adjust EMEC's assessment accordingly. Our decision to treat Domtar and EMEC similarly during the pendency of the Docket No. 2003-348 investigation should not be taken as an indication that Domtar and EMEC will or will not be treated similarly as MPI and MEW at the conclusion of the investigation.

Dated at Augusta, Maine, this 10th day of October, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.